[DE] Decision on Cosmetic Surgery Show Restrictions

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In a decision of 21 December 2004, the Bayerische Verwaltungsgericht München (Bavarian Administrative Court, Munich - case no. BY/U/1148) ruled on an urgent application from the music broadcaster MTV ("the applicant") against the Bayerische Landeszentrale für neue Medien (Bavarian New Media Office - BLM) concerning broadcast time restrictions on the MTV series " I want a famous face " (see also IRIS 2004-9:9).

The proceedings also involved the Freiwillige Selbstkontrolle Fernsehen (Voluntary Self-Regulatory Authority for Television - FSF), to which private TV broadcasters can appeal against a rating given to one of their programmes (see IRIS 2003-7:8).

The series " I want a famous face " depicts young people who have cosmetic surgery in order to resemble their idol as closely as possible.

On 15 July 2004, the FSF had cleared the first episode of the series for daytime TV. However, on 21 July 2004, the Kommission für Jugendmedienschutz (Commission for Protection of Youth in the Media - KJM) announced in a press release that it had decided that TV programmes in which cosmetic surgery was suggested, carried out or filmed for entertainment purposes should not be broadcast before 11 pm. With reference to this decision of principle, it was decided following the hearing of the applicant and with the agreement of the KJM members that the programme in question should only be shown between 11 pm and 6 am. The draft decision stated that the FSF's ruling did not stand in the way of this verdict, since the FSF had exceeded its decision-making powers. The applicant appealed against this decision. In order that the programme could be shown during the day until a decision was taken on the appeal, the applicant requested that the execution of the decision be deferred. It complained that, owing to its decision of principle, the KJM had been unable to decide objectively on the case in question and that the FSF's previous evaluation of the programme should therefore be final.

The Court partially upheld the complaint. It said that it was currently impossible to predict the outcome of the main proceedings. Neither the legal assessment of the FSF's declaration nor the claim that the KJM evaluated the programme impartially could be clarified within the framework of the summary evaluation of the temporary order proceedings. It also remained unclear whether the series should be considered harmful to children's development in the sense of Art. 5.1 of the

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Jugendmedienschutzstaatsvertrag (Inter-State Agreement on the protection of youth in the media). After weighing up both parties' interests, the Court concluded that restricting the broadcast time to between 8 pm and 6 am was a sufficient measure to protect minors for the time being. It decided that the programme was problematic under youth protection law insofar as it promoted an uncritical, positive attitude among children and young people towards cosmetic surgery, it played down the whole issue and it suggested that social acceptance was primarily dependent on outward appearance. On the other hand, however, negative consequences and side effects of the surgery were also shown. In any case, the applicant should not be expected to refrain from commercially exploiting the programme until the main proceedings had been decided, since it might also turn out that the programme should not be considered harmful to the development of children and young people.

Beschluss vom 21. Dezember 2004 des Bayerischen Verwaltungsgerichts München, Aktenzeichen: M 17 S 04.4817

Decision of the Bavarian Administrative Court (Munich), 21 December 2004, case no. M 17 S 04.4817

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